

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN T. McARTHUR,

Petitioner,

v.

CASE NO. 05-70275
HONORABLE ARTHUR J. TARNOW

RAYMOND BOOKER,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR
APPOINTMENT OF APPELLATE COUNSEL**

Petitioner John T. McArthur has appealed the Court's denial of his habeas corpus petition. Currently pending before the Court is Petitioner's motion for appointment of appellate counsel.

"[H]abeas corpus [is] an original . . . civil remedy for the enforcement of the right to personal liberty, rather than . . . a stage of the state criminal proceedings," *Woodford v. Ngo*, __ U.S. __, __, 126 S. Ct. 2378, 2386 n.2. (2006) (quoting *Fay v. Noia*, 372 U.S. 391, 423-24 (1963) (footnote omitted)), and

"[a]ppointment of counsel in a civil case is not a constitutional right. *Mekdeci v. Merrell National Laboratories*, 711 F.2d 1510, 1522 n. 19 (11th Cir.1983). It is a privilege that is justified only by exceptional circumstances. *Lopez v. Reyes*, 692 F.2d 15, 17 (5th Cir.1982)." *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). In determining whether "exceptional circumstances" exist, courts have examined "the type of case and the abilities of the plaintiff to represent himself." *Archie v. Christian*, 812 F.2d 250, 253 (5th Cir. 1987); *see also Poindexter v. FBI*, 737 F.2d 1173, 1185 (D.C. Cir. 1984). This generally involves a determination of the "complexity of the factual and legal issues involved." *Cookish v. Cunningham*, 787 F.2d 1, 3 (1st Cir. 1986).

Appointment of counsel pursuant to 28 U.S.C. § 1915(d) is

not appropriate when a *pro se* litigant's claims are frivolous, *Henry v. City of Detroit Manpower Department*, 739 F.2d 1109, 1119 (6th Cir. 1984), or when the chances of success are extremely slim. *Childs v. Duckworth*, 705 F.2d 915, 922 (7th Cir. 1983); *McKeever v. Israel*, 689 F.2d 1315, 1320-21 (7th Cir. 1982); *Ma [c]lin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981).

Mars v. Hanberry, 752 F.2d 254, 256 (6th Cir. 1985).

Lavado v. Keohane, 992 F.2d 601, 605-06 (6th Cir. 1993).

Although the Court has granted a certificate of appealability and leave to proceed *in forma pauperis* on appeal, Petitioner has only a slight chance of success on appeal. Furthermore, Petitioner adequately represented himself in the District Court, and no exceptional circumstances are present here. Accordingly, Petitioner's motion for appointment of counsel [Dkt. 52, June 11, 2007] is DENIED.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: October 2, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 2, 2007, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary